

Dated: May 10, 1995.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50611A; FRL-4953-7]

RIN 2070-AB27

1*H*,3*H*,5*H*-oxazolo [3,4-*c*] oxazole, Dihydro-7*a*-methyl-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as 1*H*,3*H*,5*H*-oxazolo [3,4-*c*] oxazole, dihydro-7*a*-methyl-, which is the subject of premanufacture notice (PMN) P-91-1324. This rule will require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: The effective date of this rule is July 17, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB-543B, 401 M Street, SW., Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires

persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitter of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 as appropriate to control the activities for which it has received the SNUR. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

EPA published a proposed SNUR for the chemical 1*H*,3*H*,5*H*-oxazolo [3,4-*c*] oxazole, dihydro-7*a*-methyl- in the **Federal Register** of November 2, 1994 at 59 FR 54874. The background and reasons for the SNUR are set forth in the preamble to the proposed SNUR. The proposed SNUR designated exposure to the PMN substance without ocular protection (chemical goggles or equivalent eye protection) and any predictable or purposeful release of the PMN substance to surface water above 500 parts per billion (ppb) as significant new uses. The Agency received no

public comment concerning the proposed SNUR. As a result, EPA is promulgating this final SNUR.

IV. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures/releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

Section 5(a)(2) of TSCA provides that EPA's determination that a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

A. The projected volume of manufacturing and processing of a chemical substance.

B. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

C. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

D. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D), because it is not an exclusive list.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the final rule. If uses which commence between the proposal date and the effective date of the final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses identified in this SNUR after the date of the proposed rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of

persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the final SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this final rule (OPPTS-50611).

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS-50611) which includes information considered by the Agency in developing this rule. The record includes the following information:

1. The economic analysis of this rule.
2. The environmental test data review support document.
3. Issue Summary Report.
4. The **Federal Register** notice pertaining to this rule.

A public version of the record, without any Confidential Business Information, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE-B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of

Management and Budget (OMB)). Under section 3(f), the Executive Order defines a "significant regulatory action" as an action likely to lead to a rule:

(1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health of safety, or State, local or tribal governments or communities (also referred to as "economically significant").

(2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency.

(3) Materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few significant new use notices for these substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 5, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, 40 CFR part 721 is amended as set forth below:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5540 to subpart E to read as follows:

§ 721.5540 1H,3H,5H-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substance identified as 1H,3H,5H-oxazolo [3,4-c] oxazole, dihydro-7a-methyl- (PMN P-91-1324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(iii) and (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 500 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119-5314-02; I.D. 051195A]

RIN 0648-AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Modification of Additional Turtle Excluder Device Requirements Within Certain Statistical Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and